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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/689,960	10/20/2003	Peter Hauber	BLDR-04c	4416

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EXAMINER

ESTREMSKY, GARY WAYNE

ART UNIT	PAPER NUMBER
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3676

DATE MAILED: 08/11/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/689,960

Applicant(s)

HAUBER ET AL.

Examiner

Gary Estremsky

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 May 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-4, 7-13 and 15-19 is/are rejected.
- 7) ☒ Claim(s) 5, 6, 14 and 20 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____

DETAILED ACTION

Claim Objections

1. Claim 9 is objected to because of the following informalities: it depends from itself apparently through typo and has been treated as though dependent from claim 1. Appropriate correction is required.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 1-4, 8, 10-13, and 16 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 1,438,547 to O'Connor.

O'Connor '547 teaches Applicant's claim limitations including : a "longitudinally extended keeper having at least three apertures" – including parts 7,826,26,26, a "cooperating longitudinally extended latch structure" – including 13,14,20,24,24,24, "carrier" – 20, "latch pins" – 24,24,24, "coaxially disposable and opposable" – the arrangement that inherently occurs when the door is shut and before the carrier drops down reads on functional recitation, a "carrier shifting guide" – including 13,14, and an "actuator" – including 30.

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As regards claim 2, parts 7,8 read on “bar” limitation where one of ordinary skill in the art would recognize that the edge shape of each keeper functions as a cam for final alignment of the locking pins 24,24,24.

As regards claim 3 parts including 12,13,14 read on broad limitation of “bar” since its vertical dimension is notably greater than its width and depth dimensions and where part 13 reads on “center section” and parts 12,14 read on “exterior flanges”, “that are attached to said opening other side” – 6.

3. Claims 1-4, 7, 8, 10-12, 15-17, and 19 are rejected under 35 U.S.C. 102(b) as being anticipated by U.S. Pat. No. 4,834,161 to Johnson.

Johnson ‘161 teaches Applicant’s claim limitations including : a “longitudinally extended keeper having at least three apertures” – 50, a “cooperating longitudinally extended latch structure” – including 91a,92,93, “carrier” – 92,93, “latch pins” – 91a, “coaxially disposable and opposable” – in the closed aligned position but not yet latched reads on functional recitation, a “carrier shifting guide” – including 75, and an “actuator” – including 107.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

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5. Claims 7, 9, 13, 15, 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 1,438,547 to O'connor.

As regards claim 7, O'connor illustrates a knob that provides a user with leverage needed for hand operation of the latch mechanism but does not fully teach "hand-operated lever". However, it would have been an obvious design choice or engineering expedient for one of ordinary skill in the art at the time of the invention to provide a lever instead of the knob to aid people having arthritis, etc. since both knobs and levers are well known in the art to be otherwise equivalent for purpose of providing a hand hold for operation of a latch mechanism and the proposed modification would not otherwise affect function of the device.

As regards claim 9, it would have been an obvious design choice or engineering expedient for one of ordinary skill in the art at the time of the invention to form the window or door and frame from plastic to reduce corrosion, weight etc. since various suitable high strength plastics are well known in the art and such modification would not otherwise affect function of the device. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

6. Claims 9 and 18 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Pat. No. 4,834,161 to Johnson.

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It would have been an obvious design choice or engineering expedient for one of ordinary skill in the art at the time of the invention to form the window or door and frame from plastic to reduce corrosion, weight etc. since various suitable fire-resistant plastics are well known in the art and such modification would not otherwise affect function of the device. It has been held to be within the general skill of a worker in the art to select a known material on the basis of its suitability for the intended use as a matter of obvious design choice. *In re Leshin*, 125 USPQ 416.

Allowable Subject Matter

7. Claims 5, 6, 14, and 20 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Response to Arguments

8. Applicant's arguments have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

9. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

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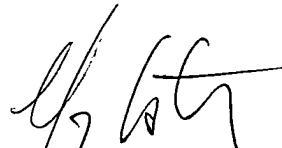
A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary Estremsky whose telephone number is 703 308-0494. The examiner can normally be reached on M-Thur 7:30-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tom Will can be reached on 703 308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gary Estremsky
Primary Examiner
Art Unit 3676